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BEFORE THE ARIZONA CORPORATION COMMISSION

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GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 DEC 30 P 3: 24

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-08-0049

NOTICE OF FILING TESTIMONY

MOTION TO HOLD PROCEDURAL
CONFERENCE

Swing First Golf LLC ("Swing First") hereby provides notice of filing the attached Direct
Testimony of David Ashton.

Swing First asks that the Administrative Law Judge schedule a procedural conference for
the purposes of setting a procedural schedule in this case.

RESPECTFULLY SUBMITTED on December 30, 2009.

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2 on December 30, 2009, to:

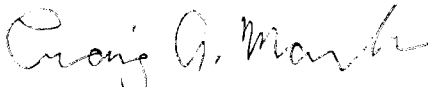
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9 **Copy of the foregoing mailed and e-mailed**
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**DIRECT TESTIMONY
OF
DAVID ASHTON
ON BEHALF OF
SWING FIRST GOLF LLC
DECEMBER 30, 2009**

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I INTRODUCTION AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND ADDRESS?

A. My name is David Ashton. My business address is 7131 W Avenida Del Sol, Peoria, Arizona 85383. I currently reside in Europe.

Q. WHAT IS YOUR RECENT PROFESSIONAL EXPERIENCE?

A. In addition to managing Swing First Golf, LLC, I am currently Vice President of Business Development for KDS. KDS is based in Paris, France, and provides an on-line software system to manage and reduce corporate travel and expense reporting costs.

From 2005 to 2006, I was employed by Reactivity, Inc of Belmont, California, as its Vice President, Business Development. Reactivity provided XML security and acceleration appliances to large corporations. Reactivity was acquired by Cisco Systems in 2007.

From 2000 to 2004 I was employed by Cyclone Commerce, of Scottsdale, Arizona, as its Vice President, Business Development. Cyclone provided B2B transaction management software to the Global 2000. In 2005, Cyclone was acquired by Axway.

Before leaving to attend graduate school, I was employed from 1995 to 1998 by Andersen Consulting (now "Accenture") as part of its Strategic Services Group. I was based both in San Francisco and Beijing.

Besides English, I also speak Cantonese and French.

Q. WHAT IS YOUR EDUCATIONAL EXPERIENCE?

A. I graduated from Brigham Young University in 1995 with degrees in International Relations and Chinese. In 2000, I was awarded a Masters in Business Administration from Stanford University.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

1 A. I am testifying on behalf of Swing First Golf, LLC ("Swing First"), a customer of
2 Johnson Utilities LLC ("Utility"). Swing First is the complainant in this case.

3 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

4 A. The purpose of my testimony is to support Swing First's complaint by discussing certain
5 activities and practices by George Johnson and his Utility. I will then testify as to the
6 remedies that Swing First is requesting from the Commission.

7 **II GEORGE JOHNSON HAS USED HIS UTILITY TO CHEAT AND ABUSE**
8 **SWING FIRST**

9 A **Swing First Had No Idea About Mr. Johnson's Character**

10 **Q. WHAT IS SWING FIRST?**

11 A. Swing First owns and operates the Johnson Ranch Golf Club in Queen Creek, Arizona.
12 This is within Utility's certificated service territory.

13 **Q. WHO IS GEORGE JOHNSON?**

14 A. George Johnson acts as Utility's Chief Executive Officer.

15 **Q. WHO IS BRIAN TOMPSETT?**

16 A. Brian Tompsett acts as Utility's Executive Vice President.

17 **Q. WHAT HAS BEEN SWING FIRST'S EXPERIENCE WITH GEORGE JOHNSON**
18 **AND HIS UTILITY?**

19 A. It hasn't been positive. Before I bought the golf course I was warned by several people
20 that Mr. Johnson was difficult to do business with because he was very powerful, and
21 unfortunately not very honest. Not knowing him, I assumed these people had been
22 colored by a couple of bad experiences and didn't give it much thought. Unfortunately,
23 in the last five years I have learned that I should have heeded these warnings. Mr.
24 Johnson has used his Utility to try to both overcharge Swing First and to cheat us out of

1 money he owes us. Until I was forced to file a complaint with the Commission, Utility
2 generally failed to deliver effluent needed to irrigate our golf course. Meter-reading has
3 been erratic and billing has been a mess. Utility attempted to illegally cut off our service
4 on two occasions, leaving Swing First with no way to irrigate the golf course. Utility has
5 also experienced mysterious pipe failures that allegedly prevented it from delivering
6 irrigation water when it knew the water was especially needed. During a rainy week in
7 early 2008, Utility deliberately over-delivered effluent to the course, causing our lake to
8 overflow and damaging the golf course. Mr. Johnson recently sent out a letter from
9 Utility, which tried to intimidate Swing First members from supporting Swing First's
10 participation in this case, attacked me personally, and attempted to destroy my business
11 relationship with the other Swing First Members. Finally, in late 2009, Utility billed us
12 for CAP-water service, even though Utility was fully aware that the line was out of
13 service.

14 **Q. HOW LONG HAS SWING FIRST BEEN A UTILITY CUSTOMER?**

15 A. I bought the course in November of 2004, so Swing First became a customer at that time.
16 We received our first bills in December 2005.

17 **Q. WHAT TYPE OF SERVICE DOES SWING FIRST RECEIVE AT THE GOLF**
18 **COURSE FROM UTILITY?**

19 A. We receive regular water service at a number of locations, but the subject of this
20 complaint is Utility's irrigation-water service.

21 **B Swing First and Utility Were Parties to a Long-Standing Contract**

22 **Q. DOES SWING FIRST HAVE A CONTRACT TO RECEIVE IRRIGATION**
23 **WATER FROM UTILITY?**

24 A. Yes. Swing First inherited a 1999 contract which provides us the first right to irrigate the
25 Johnson Ranch Golf Courses with any effluent generated by Utility within its service

1 territory. We are directly connected to Utility's treated effluent line. The contract also
2 gives Utility the right to deliver water from other sources (wells or CAP-water) but
3 provides that, if Utility exercises this right, it cannot charge more than the Commission-
4 approved effluent rate.

5 **Q. WAS THE 1999 CONTRACT ASSIGNED TO SWING FIRST?**

6 A. No. However, both Swing First and Utility believed that the 1999 contract governed their
7 rights and obligations concerning irrigation water sales and deliveries.

8 **Q. WHY DO YOU BELIEVE THAT THE 1999 CONTRACT GOVERNED SWING**
9 **FIRST'S AND UTILITY'S RIGHTS AND OBLIGATIONSN CONCERNING**
10 **IRRIGATION WATER SALES AND DELIVERIES?**

11 A. We both believed that the 1999 contract applied to us and conducted our business in
12 accordance with the contract. In addition, Mr. Tompsett testified in Utility's rate-case
13 (Docket No. WS-02987A-08-0180) that he believed that the 1999 contract applied to
14 both parties. Finally, until 2006, Utility could not deliver treated effluent directly to
15 Swing First, and production was limited for some time at Utility's new San Tan
16 Wastewater Treatment Plant. Until it could produce sufficient effluent, Utility exercised
17 its contract right to instead deliver CAP water for irrigation, but it understood that the
18 price for the CAP water would be the same as for treated effluent - \$0.62/1000 gallons.

19 **Q. DO YOU HAVE ANY EVIDENCE THAT UTILITY KNEW THAT IT WAS**
20 **CONTRACTUALLY OBLIGATED TO DELIVER CAP WATER AT THE**
21 **EFFLUENT RATE?**

22 A. Yes. Exhibit DA-1 is a copy of an invoice from Utility for irrigation water deliveries in
23 May 2006 to the Golf Course. Account No. 120362-01 was our effluent account at that
24 time and Account No. 119200-01 was our CAP-water account. As the invoice clearly
25 shows, Utility was charging the same rate for CAP water and for effluent - \$0.6424/1000

1 gallons. Utility does not perform the calculations, but this blended rate is presumably
2 based on the effluent rate of \$0.62/1000 gallons, plus monthly minimum charges and
3 taxes.

4 **Q. EVEN IF THE 1999 CONTRACT DID NOT EXIST, WOULD SWING FIRST**
5 **STILL BE ENTITLED TO RECEIVE TREATED EFFLUENT FROM UTILITY?**

6 A. Certainly. The Johnson Ranch Golf Course has been Utility's customer for many years.
7 We should be receiving as much effluent as Utility can deliver, up to our requirements.
8 This is in accordance with our rights as a tariffed effluent customer, and is wise public
9 policy.

10 **C Swing First Contracted to Manage Mr. Johnson's Golf Course**

11 **Q. HAS SWING FIRST HAD ANY OTHER BUSINESS RELATIONSHIPS WITH**
12 **UTILITY?**

13 A. Yes. In April 2006, Swing First agreed to manage the Golf Club at Oasis ("the Oasis"),
14 which was owned by another company controlled by George Johnson. Mr. Johnson said
15 that for business purposes, he would prefer to not pay us directly. Instead he proposed
16 that he would pay us with an irrigation-water credit. We ultimately agreed that Utility
17 would provide Swing First with a water credit of 150 million gallons per year in
18 exchange for us managing his course. Mr. Johnson then fired his employees that had been
19 managing the Oasis (without first telling Swing First) and Swing First took over course
20 management.

21 **Q. DID UTILITY PROVIDE THE IRRIGATION WATER CREDIT?**

22 Yes. On May 1, 2006, Swing First began managing the Oasis golf course. Utility then
23 provided the agreed-upon irrigation water credit. We were billed normally, but told not
24 to pay the monthly bills. On the subsequent monthly bills, there was no past-due balance
25 shown.

1 **Q. WHAT WAS HAPPENING TO THE PAST-DUE BALANCES?**

2 A. I do not know. There are two possibilities. One, the Oasis was paying the bills. In that
3 case, the bill credit was properly provided and Utility was made whole. Two, Utility was
4 simply writing off the bills at Mr. Johnson's direction. If this was the case, then the Oasis
5 should reimburse Utility for the water delivered to Swing First. However, in neither case
6 does Swing First owe Utility anything for irrigation water delivered while Swing First
7 was managing the Oasis Golf Course.

8 **Q. HOW LONG DID SWING FIRST MANAGE THE OASIS GOLF COURSE?**

9 Swing First discontinued the Oasis management relationship on November 16, 2006,
10 retroactive to October 31, 2006.

11 **Q. WHY DID SWING FIRST DISCONTINUE MANAGING THE OASIS GOLF**
12 **COURSE?**

13 A. After several months of managing the Oasis through one of its existing employees, Swing
14 First decided to hire and train a new manager for the Oasis golf course. Prior to formally
15 hiring that manager, I specifically set up a meeting at Mr. Johnson's office—with Mr.
16 Johnson and Mr. Tompsett—to introduce them to the individual that I was planning to
17 hire. After meeting the manager, Mr. Johnson told me that he simply wanted to hire the
18 manager directly. I told Mr. Johnson that I was willing to accept this, but I explained that
19 if he hired the manager directly there would be little else for Swing First to do, so it made
20 sense to discontinue our agreement. In response, Mr. Johnson asked us to continue to
21 manage the Oasis, at least until the new manager (who he has since terminated) was
22 properly established. I agreed to do this, at his request, but several months later I
23 terminated the agreement by voice and in writing because I simply felt we were adding
24 no value and did not deserve the water credit that accompanied it.

1 **Q. WAS SWING FIRST COMPENSATED IN ANY WAY FOR MANAGING THE**
2 **OASIS GOLF, OTHER THAN THE IRRIGATION WATER CREDIT?**

3 A. No. And as I will discuss, Mr. Johnson then directed Utility to reverse the credits and re-
4 bill Swing First for the irrigation water that had previously been provided. As a result,
5 Mr. Johnson got our services for free. Then, as I will discuss later, Mr. Johnson began to
6 punish Swing First by consistently engaging in behavior both illegal and well below the
7 standards of a Utility overseen by the Corporation Commission.

8 **D Swing First Is Entitled to a Billing Credit for Managing Mr. Johnson's Golf**
9 **Course**

10 **Q. WHAT IS THE VALUE OF THE BILL CREDIT THAT SWING FIRST EARNED**
11 **FROM MAY 1, 2006, THROUGH OCTOBER 31, 2006?**

12 A. For the six month period in which Swing First managed the Oasis, the earned water credit
13 was 75 million gallons (one-half of 150 million gallons per year). At the commodity rate
14 for effluent (\$0.62/1000 gallons) the credit was worth \$46,500. At the commodity rate
15 for CAP-water (\$0.83/1000 gallons), the credit was worth \$62,250. At either rate, the
16 credit was actually worth more, because of monthly minimums, taxes, and other charges
17 for water. We also consume much more of our annual irrigation water during the months
18 of May through October, so we would have applied more of the credit during this time
19 period. Still, to be conservative I am using a value of \$50,000 for the irrigation-water
20 credit.

21 **Q. DOES THE \$50,000 VALUE FOR THE IRRIGATION WATER CREDIT**
22 **INCLUDE INTEREST?**

23 A. No, and it should. Because Swing First had to pay more for irrigation water after Utility
24 reversed the credit in December 2006, Utility has kept these overcharges since that time.
25 At the same time, Utility has been charging 1.5% per month interest to Swing First for all

1 alleged past-due balances. Therefore, it is appropriate that Utility should pay the same
2 1.5% per month interest rate on all refunds that it owes Swing First.

3 With interest at 1.5% per month for 35 months through the end of October 2009, the total
4 amount of the irrigation water credit that should be refunded to Swing First is
5 \$84,194.07.

6 E **When Swing First Discontinued Its Business Relationship with Mr. Johnson,**
7 **Mr. Johnson and Utility Began a Campaign to Drive Swing First out of**
8 **Business**

9 Q. **HOW DID MR. JOHNSON REACT WHEN SWING FIRST STOPPED**
10 **MANAGING THE OASIS GOLF COURSE?**

11 I wasn't in his office when he was making decisions, but Mr. Johnson must have been
12 very angry. The following events transpired immediately – in obvious retaliation for
13 Swing First discontinuing its management services arrangement with Mr. Johnson's golf
14 course.

- 15 1. Utility reversed Swing First's water credit, which was valued at approximately
16 \$50,000.
- 17 2. In November 2006, Utility changed our account numbers for effluent and CAP water.
18 Our effluent account was changed from Account No. 120362-01 to 120362-02 and
19 our CAP-water account was changed from Account No. 119200-01 to 119200-02.
- 20 3. Again, effective as of November 2006, Utility began charging Swing First far above
21 the lawful rates for effluent and CAP water. For Account No. 119200-02, we were
22 charged \$3.75/1000 gallons for CAP water, instead of the lawful \$0.827/1000 gallon
23 CAP water rate. For Account No. 120362-02 we were charged \$0.83/1000 gallons
24 for effluent instead of the lawful \$0.62/1000 gallons effluent rate.
- 25 4. Utility turned off the effluent tap. For seven months in 2007, Utility delivered no
26 effluent whatsoever, and very little in the remaining five months of the years. Of

1 course this meant that Utility was instead delivering more expensive CAP water,
2 which was priced at over four times the lawful rate for much of the year.

3 **F Utility Withheld Effluent and Grossly Overcharged Swing First for**
4 **Substitute Deliveries**

5 **Q. WHAT HAPPENED TO YOUR BILLS AFTER UTILITY CHANGED YOUR**
6 **ACCOUNT NUMBERS, BEGAN CHARGING FAR MORE THAN THE**
7 **LAWFUL RATES, AND STARTED WITHHOLDING EFFLUENT?**

8 A. As a result of these acts, Utility created a huge phony past-due balance. In November
9 2007, Utility used this phony past-due balance as a pretext to twice illegally shut off
10 Swing First's water service. I will discuss this in greater detail later.

11 **Q. DOES SWING FIRST NEED CAP-WATER FOR IRRIGATION?**

12 A. No. We want to use effluent for all of our irrigation and it appears that Utility generates
13 sufficient effluent for all our irrigation needs. We have a lake on the course, which we
14 can use to store effluent. This allows us to take effluent at night to use during the day.

15 Further, it is not good public policy to irrigate a golf course with CAP water unless it is
16 absolutely necessary. With treatment, CAP water can be delivered to customers as
17 potable-water. Because it is a renewable resource and does not deplete groundwater
18 supplies, it should be the first choice for potable-water service. In contrast, treated
19 effluent can normally be used directly only for irrigation.

20 **Q. WHAT DO YOU UNDERSTAND TO BE ARIZONA AND COMMISSION**
21 **POLICY CONCERNING GOLF COURSE IRRIGATION?**

22 A. My understanding is that Arizona, Pinal County, and the Commission all encourage golf
23 courses to use treated effluent as much as possible to irrigate their golf courses.

24 **Q. HAS SWING FIRST ATTEMPTED TO COMPLY WITH THIS POLICY?**

1 A. Certainly. We wish to use nothing else but effluent for our irrigation needs. There is the
2 added benefit that effluent is less expensive than CAP water. Since January 2008, after
3 Mr. Johnson was forced to resume effluent service, we have successfully been able to
4 irrigate our golf course entirely with effluent (except for the two mysterious "line-breaks"
5 that I will discuss later). If Mr. Johnson had not turned off the effluent tap in 2007, we
6 could also have irrigated exclusively with effluent in that year.

7 **Q. WHAT IS UTILITY DOING WITH THE TREATED EFFLUENT IT PRODUCES**
8 **THAT IT IS NOT DELIVERING TO SWING FIRST?**

9 A. Based on Mr. Tompsett's testimony in the rate case, it appears that Utility has been
10 selling some effluent to other irrigation customers (at illegal rates), but has been pumping
11 most of the effluent it produces into the ground to generate recharge credits.

12 **Q. HOW DO YOU FEEL ABOUT UTILITY KEEPING ITS EFFLUENT, PUMPING**
13 **IT INTO THE GROUND, AND THEN TRYING TO SELL YOU HIGHER**
14 **PRICED WATER?**

15 A. I'm disappointed and concerned because I couldn't get Utility to change its behavior
16 toward my business (i.e. giving me effluent) until I filed a formal complaint. And doing
17 that has brought a lot of negative consequences to me, my business and my family that I
18 never asked for or wanted to deal with. As I see it, Utility has been stealing money out of
19 Swing First's pocket. I always thought the cost of water to irrigate the course was pretty
20 high, but accepted it because—like all of its other customers—I assumed Utility was
21 following the law, as regulated by the Commission. When I realized Utility was in fact
22 not following the law, I didn't know where to turn until I found the Commission.

23 **Q. DID UTILITY DELIBERATELY WITHHOLD EFFLUENT FROM SWING**
24 **FIRST?**

1 A. It certainly appears that way. Utility has been able to directly deliver effluent to Swing
2 First since at least March 2006. Mr. Tompsett testified that there are two customers
3 connected to the Santan WWTP: Swing First and the Santan HOA. Based on data
4 requests in the rate case, I have prepared Exhibit DA-2, which compares the amount of
5 effluent available from the Santan WWTP to what Utility actually delivered to Swing
6 First and the Santan HOA.

7 **Q. HAS UTILITY SOLD ALL THE EFFLUENT THAT IT HAS PRODUCED?**

8 A. No. The table shows that since March 2006, Utility has produced far more effluent than
9 it has actually sold. In fact, Utility has sold only about 42% of the effluent that it has
10 produced since March 2006. Swing First could have satisfied essentially all of its
11 irrigation requirements with treated effluent. Instead, Utility has withheld effluent, and
12 delivered and billed us for more expensive CAP water.

13 **Q. FROM NOVEMBER 2006 THROUGH DECEMBER 2007, WHAT DID UTILITY**
14 **DELIVER TO SWING FIRST INSTEAD OF EFFLUENT?**

15 A. Instead of effluent, Utility delivered more expensive CAP water and then charged us over
16 four times the tariffed CAP-water rate (six times the tariffed effluent rate) for much of
17 deliveries. As I just testified, in 2006 Utility changed Swing First's account number for
18 CAP water from 00119200-01 to 0019200-02. The initial read on November 1, 2006,
19 for this account number was 408,189,000 gallons. The last read in 2007 was
20 484,477,000 gallons on December 19th. This means that from November 2006, through
21 December 2007, Utility delivered 76,288,000 gallons of CAP water to Swing First.

22 **Q. DID UTILITY PRODUCE ENOUGH EFFLUENT TO SATISFY SWING FIRST'S**
23 **IRRIGATION REQUIREMENTS?**

24 A. Yes, Utility could easily have supplied all of Swing First's irrigation needs with effluent.
25 From Exhibit DA-2, we can calculate that Utility produced 239,943,000 gallons of

1 effluent from the San Tan Plant over the same time period (November 2006 – December
2 2007). Clearly, Utility produced more than enough effluent to satisfy all of Swing First's
3 irrigation needs.

4 **Q. IS UTILITY STILL WITHHOLDING EFFLUENT?**

5 Since March 2008—after having delivered virtually no effluent in 2007, twice shutting
6 off Swing First's water, suing my wife and me for defamation, and then flooding our golf
7 course—Utility has generally complied with its obligation to deliver effluent as we need
8 it. Except for the two suspicious "line breaks," Swing First has been able to satisfy all of
9 its irrigation needs with treated effluent. Also not surprisingly, with Utility under the
10 Commission's scrutiny, Swing First's irrigation bills have dropped dramatically.

11 It is interesting to note that, even after its sales to Swing First and to the San Tan HOA,
12 Utility still had effluent to spare. For the entire year of 2008, Utility only sold
13 approximately 73% of the effluent that it produced from the Santan WWTP.

14 **Q. WHAT DID UTILITY DO WITH THE EFFLUENT IT PRODUCED AND**
15 **WITHHELD FROM SWING FIRST?**

16 **A.** Mr. Tompsett testified that Utility profited at Swing First's expense by withholding
17 effluent. Any effluent that Utility does not sell from its San Tan Plant is recharged into
18 the ground. This allowed Utility to create recharge credits that it can later use to pump
19 more groundwater in the Phoenix Active Management Area. So not only did Utility
20 force Swing First to irrigate its golf course with renewable CAP water that could have
21 been used for drinking water, but, as a result, Utility will now be able to pump more
22 groundwater and further lower the water table in the Southwest Valley.

23 **G Utility Regularly Failed to Read Swing First's Meters**

24 **Q. HAS UTILITY REGULARLY READ YOUR METERS?**

1 A. Utility often fails to read our meters. During one six-month stretch in 2007, Utility did
2 not read our effluent meter even once.

3 **H Utility Rendered Inaccurate Bills and Generated a Huge, Phony Past-due**
4 **Balance as a Pretext to Shut Off Swing First's Irrigation Service**

5 **Q. HAS UTILITY RENDERED ACCURATE BILLS?**

6 A. No. Utility's bills were regularly inaccurate until we were forced to file this complaint.
7 Since then, the bills have become more accurate while has been under scrutiny, although
8 in late 2009 Swing First was in fact billed for CAP-water service, even though Utility
9 knew that the line was out of service. At the same time, the problems we've encountered
10 have been experienced by other of Utility's business customers as well. Up until I the
11 time that I filed the formal complaint, Utility regularly charged me the \$0.83/1000 gallon
12 CAP-water rate for effluent instead of the \$0.62/1000 gallon effluent rate. It's hard to
13 believe that this changed for any reason other than the fact that Utility's behavior had
14 fallen under scrutiny. In 2007, Utility refused to deliver treated effluent and then charged
15 me the \$3.75/1000 gallon potable water rate for much of the CAP-water it delivered.
16 Because it should have delivered effluent at \$0.62/1000 gallons, this rate was essentially
17 six times more than it should have been charging Swing First.

18 **Q. HAS UTILITY CORRECTED ITS INACCURATE BILLS?**

19 A. Only partially, and then only for consumption prior to November 1, 2006. In the rate
20 case, Mr. Tompsett testified that Utility has provided Swing First credits in three
21 accounts:¹

¹ Ex. A-6 at 11:7-14.

Table 1 – Summary of Utility Refunds

Date	Account No.	Type of Account	Amount of Credit
September 2007	00119200-01	CAP Water (Old Account)	\$1,260.43
September 2007	00120362-01	Effluent (Old Account)	\$1,938.86
December 2007	00120362-01	Effluent (Old Account)	\$45,892.94
December 2007	00119200-01	CAP Water (Old Account)	\$43,358.92
December 2007	00119200-02	CAP Water (New Account)	\$8,382.34

As can be seen, all but one of the credits went to correct billing errors in the old accounts (those ending in 01). Although we have never been provided copies of the old bills, we will accept that these old accounts have now been corrected, with the exception of the reversed billing credit. However, it is important to note that Utility did not provide Swing First any appreciable credits until it got caught – after Swing First filed its informal complaint with the Commission on November 20, 2007.

And, as will be discussed next, Utility has still not provided any material credits to Swing First for its massive over-billing in Account Number 00119200-2, where for six months it charged Swing First \$3.75/1000 gallons for CAP water which had a tariff rate of just \$0.827/1000 gallons, and when it should have been providing effluent at the rate of \$0.62/1000 gallons.

Q. HOW MANY ACCOUNTS ARE STILL IN DISPUTE BETWEEN UTILITY AND SWING FIRST?

A. Utility and Swing First now agree that, with the refunds listed above, the balances in the old accounts (00119200-1 and 00120362-01) are no longer in dispute, except that Utility still owes Swing First a refund to compensate it for the reversed billing credit. However, as of November 2007, Utility still claimed that Swing First owed \$125,716 in Account No. 00119200-2. After giving effect to the December 2007 bill credit and subsequent payments, Utility still maintains that Swing First owes it over \$107,000 as of October

1 2009. There are also issues with the new effluent account (00120362-02), which I will
2 discuss later.

3 **I Swing First Grossly Overpaid Utility for Irrigation Water Service**

4 **Q. WHAT IS THE CORRECT BALANCE IN THE CAP-WATER ACCOUNT?**

5 A. To answer this question, I have created two exhibits. The first is Exhibit DA-3. I
6 included all consumption and payments shown on Utility's CAP-water bills for
7 December 2006 through December 2007. However, as I discussed above, much of the
8 consumption was incorrectly billed at \$3.75/1000 gallons instead of the lawful rate of
9 \$0.827/1000 gallons. Therefore, I billed all consumption at the lawful CAP-water rate of
10 \$0.827/1000 gallons. At the lawful rate, the correct bills for the period would have been
11 \$81,246.66, while Swing First's actual payments totaled \$110,446.97. This means that
12 Swing First overpaid Utility \$29,200.31 at the CAP-water rate. Utility has been billing
13 Swing First 1.5% per month in interest on the phony past-due balance. If we apply the
14 same interest rate to the total amount Swing First overpaid for the 22 months from
15 December 2007 through October 2009, then the total amount Utility owes Swing First
16 would be \$40,517.29.

17 **Q. SO, DOES UTILITY OWE SWING FIRST JUST \$40,517.29 FOR**
18 **OVERPAYMENTS IN THE CAP-WATER ACCOUNT?**

19 A. No, Utility actually owes Swing First \$82,602.82. Exhibit JA-4 calculates this amount.
20 Again, it includes all consumption and payments shown on Utility's CAP-water bills for
21 December 2006 through December 2007. Instead of \$3.75/1000 gallons, all consumption
22 is billed at \$0.62/1000 gallon, which is the rate for the effluent that Utility withheld.
23 Utility was also charging Swing First for two minimum bills—one for CAP water and the
24 other for effluent—while it had more than enough effluent available to satisfy all of
25 Swing First's irrigation needs. Therefore, there is no separate minimum-bill charge for

1 the CAP-water deliveries. I have also removed the illegal Superfund Tax charge, which I
2 will also discuss later.

3 The correct bills for the period would have been \$50,420.26 and actual payments again
4 totaled \$110,446.97. This means that because Utility illegally withheld effluent and
5 overpriced CAP water, Swing First overpaid Utility \$60,026.71. Utility has been billing
6 Swing First 1.5% per month in interest on the phony past-due balance. If we apply the
7 same interest rate to the total amount Swing First overpaid for the 22 months from
8 December 2007 through October 2009, then the total amount Utility owes Swing First is
9 \$83,290.88.

10 **Q. IS \$83,290.88 THE TOTAL AMOUNT THAT UTILITY OWES SWING FIRST**
11 **FOR OVERPAYMENTS IN THE CAP-WATER ACCOUNT?**

12 A. This is the correct amount for this account as of October 2009. The actual amount should
13 include interest at 1.5% per month from October 2009 up to the date that Utility refunds
14 the overpayments. It also does not include the amounts that Utility owes Swing First for
15 the irrigation water credit and other illegal charges. I will calculate a total amount at the
16 end of my testimony.

17 **Q. WERE UTILITY'S OVERBILLINGS ACCIDENTAL?**

18 A. No. First, the "errors" began at the same time that Utility began withholding effluent.
19 Second, Utility only began correcting "errors" after I went to the Commission. Third,
20 Utility claims that it has corrected its multiple billing errors, but it still hasn't corrected
21 the obvious billing errors in the CAP-water account. Fourth, Utility's own employees
22 personally told me that they don't bill according to the law, but according to what Mr.
23 Johnson tells them to bill. In 2007, when I asked a Utility employee why it was billing
24 me \$3.75 per thousand gallons for CAP water, the response was "Because George told us

1 to change the rate in our computers, and when George tells you to do something you do
2 it.”

3 **J Utility Has Failed to Address Swing First's Billing Inquiries**

4 **Q. HOW HAS UTILITY TREATED YOUR BILLING INQUIRIES?**

5 A. Utility has generally treated me with rudeness and defiance. Mr. Tompsett has refused in
6 writing to provide us replacement copies of the original 2005 and 2006 bills, so I don't
7 have them. Instead it has provided us bills that it created at a later date.

8 As an example, Utility provided in discovery a “copy” of a September 30, 2006, bill
9 which showed a total outstanding balance of \$52,031.80. Then, the bill “copy” provided
10 by Utility dated December 31, 2006, showed no previous balance. We asked for an
11 explanation. Utility then explained that this balance reduction reflected credits for
12 payments made in January 2007, a billing credit applied in September 2007, and a billing
13 credit applied in December 2007, almost one year after the December 31, 2006, bill.

14 The bill supplied by Utility in response to our data request was obviously created long
15 after the original bill was sent to me, and it's very difficult to discern (from the various
16 sets of bills) what is real, what isn't, and how the charges and credits came about. This
17 naturally works to Utility's advantage.

18 **Q. WHY DID YOU NOT RETAIN COPIES OF ALL YOUR BILLS FROM 2005 AND**
19 **2006?**

20 A. Of course we should have. However, up until the problems began I was naïve and had no
21 reason to doubt that Utility was following the law, so we did not keep a file of paid utility
22 bills. It makes me wonder how many others in the service area have also been
23 overcharged because they're too naïve to know that a Commission-regulated Utility
24 could behave in such a way.

1 **Q. HAS SWING FIRST CONTINUED TO PAY ITS BILLS FROM UTILITY?**

2 A. Yes. For each bill we calculate the amount that should be paid at the effluent rate and
3 pay that amount. We ignore any claimed outstanding balance.

4 **K Utility Illegally Shut Off Swing First's Irrigation Water Service**

5 **Q. YOU STATED THAT UTILITY TWICE ILLEGALLY SHUT OFF SWING**
6 **FIRST'S IRRIGATION WATER; WHAT DO YOU MEAN BY "ILLEGALLY"?**

7 A. I mean two things. First, the past-due balance was phony, so there was no legal basis for
8 the shut-off. Second, Utility's shut-offs violated the Commission's rules. A utility
9 cannot terminate water service except upon five-days written notice. See R14-2-509(D -
10 E). As Mr. Tompsett acknowledged in the rate case, Utility twice shut off Swing First's
11 service without the required notice. This was illegal.

12 **Q. WHAT DID YOU DO AFTER UTILITY ILLEGALLY SHUT OFF SWING FIRST'S**
13 **SERVICE?**

14 A. To get Utility to comply with the Commission's rules, Swing First filed an informal
15 complaint, followed by a formal complaint with the Commission (Docket No. WS-
16 02987A-08-0049).

17 **L Utility Retaliated Against Swing First for Filing an Informal Complaint**

18 **Q. HOW DID GEORGE JOHNSON REACT TO SWING FIRST'S COMMISSION**
19 **COMPLAINT?**

20 A. The first thing Mr. Johnson did was to file a lawsuit in Superior Court to try to force
21 Swing First to pay the phony past-due balance. Currently, at our request, the Judge has
22 deferred to the Commission's jurisdiction and is continuing the case to allow the
23 Commission complaint case to be resolved.

24

1 **Q. DID GEORGE JOHNSON DO ANYTHING TO YOUR PERSONALLY?**

2 A. Yes. He amended the Court complaint to add counts of defamation and tortuous
3 interference with a business relationship. This was because I spoke with another
4 irrigation customer to discuss our issues to see if they had also been overcharged by
5 Utility (they certainly felt that they had been, based solely on their own internal analysis
6 of their bills). These new counts are obviously designed to silence me and set an
7 example of what happens to those who stand up to Mr. Johnson.

8 If I had the money, I could have just paid the money that he claimed I owed him and
9 likely resolved the lawsuit, but how could I accede to such blatant intimidation tactics? I
10 just wanted to buy water for the golf course in accordance with my contracts and the law,
11 and at the tariffed price. It should not be difficult for Utility to just sell us effluent at the
12 tariffed price, read our meters, and bill us accurately.

13 **Q. WAS THERE ANYTHING ELSE ABOUT THE AMENDMENTS THAT WAS**
14 **ESPECIALLY HURTFUL?**

15 A. Yes. Utility added my wife as a defendant. This has caused her extensive anguish. I
16 really didn't appreciate this. You can pick on a man, but when you pick on his wife, that
17 is really low.

18 **M Utility Flooded Swing First's Golf Course in Retaliation for Swing First**
19 **Filing a Formal Complaint**

20 **Q. HOW ELSE DID GEORGE JOHNSON AND UTILITY RETALIATE?**

21 A. As I discussed above, Utility barely delivered any effluent to the Johnson Ranch Golf
22 Course in 2007 and charged us far more than the lawful rates for the CAP water it
23 unilaterally substituted. Swing First then filed its formal complaint on Friday, January
24 25, 2008. Mr. Tompsett testified that he received a copy of the complaint on Friday,
25 February 1, 2009.

1 The week beginning on Sunday, January 27, had been extremely rainy. As a result,
2 Swing First needed no irrigation water for its golf course. On the same day it received a
3 copy of the complaint, Utility retaliated against Swing First by delivering huge amounts
4 of effluent to Swing First, despite requests that they not do so. This caused the lake
5 bordering the 18th hole to overflow, which damaged the golf course. Swing First
6 employees asked the Utility several times to stop delivery, but they ignored the requests.
7 The employees then escalated the issue to me. I asked Utility several times in writing to
8 stop the deliveries.

9 **Q. WHAT DID UTILITY DO WHEN YOU ASKED IT TO STOP DELIVERING**
10 **EFFLUENT?**

11 Utility's response was simply outrageous. Mr. Tompsett sent me an e-mail that clearly
12 showed that Utility was retaliating against our complaint by flooding the golf course:

13 You have now filed a formal complaint with the Arizona Corporation
14 Commission alleging, among other things, service interruptions. You even
15 requested relief asking that 'The Commission to order Utility to continue
16 providing service during the pendency of this matter'. We were served
17 with that complaint on Friday February 1, 2008. Now a mere 3 days later
18 you now demand that 'WE STOP THE DELIVERY OF WATER'. Which
19 way do you want it?

20 Mr. Tompsett also blamed the flooding on the recent rains, but still went on to argue that
21 Utility had the right to flood the golf course.

22 **Q. DID RAIN CONTRIBUTE TO THE FLOODING?**

23 A. Rain contributed only to the extent that our lake was already full because we didn't need
24 to irrigate. Therefore, there was nowhere for Utility's unwanted deliveries to go except
25 onto the 18th fairway.

26

1 **Q. WHAT HAPPENED TO THE GOLF COURSE AS A RESULT OF UTILITY'S**
2 **DELIBERATE FLOODING?**

3 A. I e-mailed photographs to Mr. Tompsett that showed the extent of the flooding. The
4 photographs were taken on Saturday, February 2, after the Utility over-deliveries and
5 before additional rain on Sunday February 3. Exhibit DA-5 displays copies of these
6 photographs. As they show, the flooding was extensive. The photographs show the 18th
7 fairway. For perspective, the bottom-left photograph shows a golf cart, which is dwarfed
8 by the flooding.

9 The flooding damaged the golf course and created a hazard to public health and safety.
10 Golfers drove golf carts and walked through the effluent, which exposed them to the
11 effluent and caused significant damage to the golf course. My employees also came in
12 contact with the effluent as part of their efforts to repair and clean up the course.

13 **Q. DID UTILITY PROVIDE A CREDIT FOR THE OVERDELIVERED EFFLUENT**
14 **AND THE RESULTING DAMAGE TO THE GOLF COURSE?**

15 A. No, to the contrary, Utility actually billed Swing First for all effluent delivered in
16 February 2008, including the deliveries responsible for the golf-course flooding.

17 **Q. WHAT WOULD BE AN APPROPRIATE CREDIT FOR THE**
18 **OVERDELIVERED EFFLUENT AND THE RESULTING DAMAGE TO THE**
19 **GOLF COURSE?**

20 A. An appropriate credit would refund the amount paid for unneeded effluent deliveries and
21 compensate Swing First for damage to the golf course and reduced greens fees as a result
22 of Utility's flooding. Swing First will leave the determination of the latter damages to its
23 court case. However, it would be appropriate for the Commission to order refunds for the
24 cost of the effluent intentionally delivered by Utility that was not ordered by Swing First.

I cannot calculate this amount without daily meter readings, which I do not have. As a proxy, it would be reasonable to assume that one-half of the effluent delivered in February 2008 was unwanted and intentionally over-delivered. In February 2008, Utility delivered 5.469 million gallons of effluent to Swing First. Half of this amount is 2.7345 million gallons. This overpayment would then be \$2,448.99 as of October 2009, calculated as follows:

Effluent Usage	Volumetric Charge at Effluent Rate	Superfund Assessment	Transaction Privilege Tax	Overbilling
2,734.50	\$ 1,695.39	\$ 11.02	\$ 111.90	\$1,818.31
Total through October 2009 with interest @ 1.5%/mo.				<u>\$2,448.99</u>

N Utility Used Undocumented Line Breaks as Pretexts to Withhold Deliveries during Periods of Critical Irrigation Needs

Q. HAVE THERE BEEN ANY MORE RECENT ISSUES WITH UTILITY?

A. Sadly, yes. Golf courses in the Valley consume the greatest amount of water during over-seeding, which usually occurs each year in October. At that time, we shave the summer Bermuda-grass turf and stop watering so we can dry it out in preparation for over-seeding. Then, when the summer turf is dry, we over-seed with a winter grass like Rye. To ensure the new grass takes root as quickly as possible, we have to water heavily. During over-seeding we use 800,000 to 900,000 gallons per day, which exceeds the capacity of Utility's closest water treatment plant. Although we can manage at the plant capacity level, it is much easier with Utility's cooperation.

In the early fall of 2008, I met with Mr. Tompsett on an unrelated matter (an Oasis liquor-license issue, which Utility was responsible for) and asked if he would please store

1 effluent for us for later delivery. He said he could do that and we later exchanged emails
2 about it. However, when we asked to draw on the stored effluent, Mr. Tompsett said that
3 they had no stored effluent for us. He then tried to force us into signing a CAP-water
4 delivery contract.

5 **Q. WHAT HAPPENED AFTER UTILITY REFUSED TO DELIVER STORED**
6 **EFFLUENT?**

7 A. Utility backed down on its demand that I sign a CAP-delivery contract and began
8 delivering effluent directly from the plant. But then Utility claimed that it had a broken
9 line and could not deliver any effluent for about a day. This was the second time in 2008
10 that Utility claimed that its effluent delivery line has broken. The first time was just a
11 few month earlier, during our peak summer-irrigation demand.. Utility certainly knows
12 when we most need water.

13 **Q. WAS SWING FIRST ABLE TO SUCCESSFULLY OVER-SEED IN OCTOBER**
14 **2008?**

15 A. Ultimately, yes. Despite Utility, and thanks to our lake storage and a very competent
16 groundskeeper, we were able to provide enough water for over-seeding.

17 **Q. WHY DO YOU THINK THAT THE CLAIMED LINE BREAKS WERE PHONY?**

18 A. Through 2007, we never had a line break on the effluent line. However, in January 2008,
19 Utility removed a flow restrictor on the effluent line and replaced the three-inch meter
20 with a six-inch meter. The purpose of the service was allegedly to reduce back pressure
21 on the line and to reduce line breaks. Yet, there were two alleged line breaks in 2008,
22 just after the maintenance designed to prevent line breaks. The timing was certainly
23 suspicious.

Q. HOW WAS SWING FIRST DAMAGED AS A RESULT OF THE ALLEGED LINE BREAKS?

A. Utility delivered more expensive CAP Water instead of available effluent. The total resulting overpayment is \$2,183.90.

	CAP Usage	Difference Between CAP and Effluent Rates	Superfund Assessment	Transaction Privilege Tax	Overbilling
Jul-08	6,161.00	\$ 1,336.94	\$ 8.69	\$ 88.24	\$1,433.86
Total through October 2009 with interest @ 1.5%/mo.					<u>\$1,792.66</u>

	CAP Usage	Difference Between CAP and Effluent Rates	Superfund Assessment	Transaction Privilege Tax	Overbilling
Nov-08	1,406.00	\$ 305.10	\$ 1.98	\$ 20.14	\$327.22
Total through October 2009 with interest @ 1.5%/mo.					<u>\$391.23</u>

Total CAP Overpayment **\$2,183.90**

Q. HAVE THERE BEEN ANY RECENT BILLING/LINE-BREAK ISSUES?

A. Yes. Even though we don't need CAP water, Utility has continued to bill us \$900 each month for CAP-water service. In September 2009 we found out that our CAP-water line had been cut sometime previously and was no longer functioning. Even though Utility was well aware of the line cut, they never said a word to us about it and continued to bill us for a line that could not provide service. No one spoke to us about this, no one requested our permission or consent to cut the line, and no one informed us about it after the fact. We found out about it entirely by accident.

O Utility Overcharged Swing First for Minimum Bills and Illegal Charges

Q. HAVE THERE BEEN ANY OTHER OVERCHARGES?

A. Yes. There have been three. First, as I just discussed, Utility replaced Swing First's three-inch effluent meter in January 2008 with a six-inch meter. However, Utility has been charging Swing First the \$900 monthly minimum for a six-inch meter since it changed the effluent account number in December 2006. Utility's wastewater tariffs do not really authorize a minimum bill for effluent service. Nonetheless, Utility has been

1 charging a \$900/month minimum bill to Swing First for effluent service, apparently
2 based on its water minimum bill for a six-inch meter. However, Swing First was served
3 with a three-inch meter until 2008. The minimum bill for this sized meter is only \$270.
4 Further, Utility changed the meter size for its benefit, not at Swing First's request. It did
5 not otherwise affect the effluent system investment dedicated to serve Swing First.
6 Therefore, it is inappropriate for Utility to charge more than \$270 per month for its
7 monthly effluent minimum bill, even after January 2008.

8 **Q. WHAT SHOULD UTILITY BE ORDERED TO REFUND SWING FIRST FOR**
9 **THE INCORRECT EFFLUENT MONTHLY MINIMUM CHARGES?**

10 A. The difference between the correct and incorrect monthly minimums is \$630 per month.
11 Through October 2009, Utility has sent out and Swing First has paid 35 bills with this
12 excess monthly bill, for a total of \$22,050. With interest at 1.5% per month, the total as
13 of October 2009 was \$28,723.02. Interest would continue to accrue after this date on the
14 previous payments and on the additional overpayments made after October 2009.

15 **Q. YOU SAID THAT THERE WERE THREE OVERCHARGES; WHAT WAS THE**
16 **SECOND OVERCHARGE?**

17 A. Utility has been also charging Swing First a \$900 monthly minimum each month for CAP
18 water. This was clearly inappropriate. Certainly after December 2006, Utility has
19 generated more than enough effluent to supply all of Swing First's irrigation needs. As I
20 previously discussed, Swing First does not want CAP water and does not need it. There
21 was no reason for Utility to charge Swing First the CAP monthly minimum.

22 **Q. WHAT SHOULD UTILITY BE ORDERED TO CREDIT SWING FIRST FOR**
23 **THE IMPROPER CAP-WATER MONTHLY MINIMUM CHARGES?**

24 A. Beginning in December 2006 and continuing through October 2009, Utility has sent out
25 and Swing First has paid 35 bills with the improper \$900 monthly bill, for a total of

1 \$31,500. In Exhibit DA-4, I removed the minimum bills through December 2007, but
2 Utility has still charged the minimum bill each month since then. Because we have not
3 required CAP-water service, Utility should credit this account for all minimum bills,
4 together with associated late charges, and interest.

5 **Q. WHAT IS THE THIRD OVERCHARGE?**

6 A. Utility bills Swing First and all of its water and effluent customers, each month for a
7 Superfund "Tax" at the rate of \$0.0065/1000 gallons. This tax is calculated based on
8 customer usage. Yet, in Decision No. 64598, dated March 4, 2002, the Commission told
9 Utility that it could not pass usage-based taxes to its water customers, only revenue based
10 taxes. It appears that, by charging another usage-based tax to its water customers, Utility
11 knowingly disregarded this Commission Order. In our calculations of the appropriate
12 rates that Utility should have charged Swing First, we have removed the Superfund Tax
13 charge.

14 **P Utility Tried to Intimidate Swing First from Participating in this Case and**
15 **the Rate Case**

16 **Q. WERE THERE ANY MORE INCIDENTS WITH UTILITY IN 2009?**

17 A. Yes. The most recent incident is perhaps the worst, and should cause the Commission
18 great concern.

19 **Q. IN 2009, WHAT DID UTILITY AND MR. JOHNSON DO?**

20 A. Exhibit DA-6 is a copy of a February 9, 2009, letter from Utility, signed by George
21 Johnson (attachments deleted). The letter was sent to multiple members of Swing First
22 Golf. The letter was clearly intended to intimidate Swing First members from supporting
23 Swing First's participation in this case and in the rate case. It also attacked me
24 personally, and attempted to destroy my business relationship with the other Swing First
25 Members.

1 **Q. HOW DID UTILITY TRY TO INTIMIDATE SWING FIRST'S MEMBERS?**

2 A. Acting on behalf of Utility, George Johnson threatens to sue the members for defamation
3 if they do not proactively oppose Swing First's cases at the Commission. Based on Mr.
4 Johnson's behavioral history, a reasonable person would take this threat seriously. Mr.
5 Johnson and his companies have already filed defamation lawsuits against Attorney
6 General Terry Goddard and his wife, against me and my wife, and against several of
7 Utility's customers.

8 **Q. HOW DID UTILITY ATTACK YOU PERSONALLY?**

9 A. Acting on behalf of Utility, George Johnson attached copies of several legal pleadings
10 concerning an unfortunate incident that I was involved with in 2005. This incident is
11 irrelevant to my business ability, to this case, and in any way to my integrity.

12 **Q. HOW DID UTILITY ATTEMPT TO DESTROY YOUR BUSINESS**
13 **RELATIONSHIP WITH THE OTHER SWING FIRST MEMBERS?**

14 A. In Mr. Johnson's letter, Utility suggests without any reason that there is some basis for
15 the Swing First members to require outside management and financial audits. But I
16 already provide audited financials to my investors. Utility also suggests that my personal
17 tax returns should be audited. Again, there is no basis for Utility's "suggestion," except
18 to hurt me.

19 **Q. WHAT ELSE DID UTILITY DO TO THREATEN AND INTIMIDATE SWING**
20 **FIRST'S MEMBERS?**

21 A. I have been told and I believe that Mr. Johnson called customers and/or Swing First
22 members and demanded to take their depositions. He threatened that if they did not give
23 in to his demand, he would get an order forcing them to provide testimony. These
24 individuals have little to no experience with legal matters, are not represented by counsel,

do not understand the law related to this issue, and are afraid to respond negatively to Mr. Johnson's demands due to fear of reprisal.

Q. ARE YOU ASKING THE COMMISSION TO PROVIDE YOU SPECIFIC RELIEF IN THIS CASE?

A. No. This is a matter for the court case, but the Commission should be aware of it when deciding what relief to provide in this case. Just like Utility's flooding of our golf course, this was clearly an intentional act in retaliation against Swing First for exercising its right to ask the Commission for relief. It belies Utility's claim that it "accidentally" began withholding effluent in 2006-07 and charging Swing First far more than Utility's lawful rates. All of these acts were clearly intentional and were part of Utility's campaign to drive Swing First out of business and to cause me and my family as much grief as possible.

III REQUESTED RELIEF

Q. WHAT IS THE TOTAL AMOUNT THAT UTILITY OWES SWING FIRST AS OF OCTOBER 2009?

A. The total is \$224,094.67, calculated as follows:

Irrigation Water Credit Refund	\$84,194.07
2006-07 Effluent Over-billing	\$83,290.88
February 2008 Flooding Overcharge	\$2,448.99
July 2008 "Line-break" Overcharge	\$1,792.66
November 2008 "Line-break" Overcharge	\$391.23
Effluent Minimum Bill Overcharge	\$28,723.02
CAP Minimum Bill Overcharge (or Credit Account)	\$23,253.82
Total Amount Owed Swing First (As of 10/31/09)	\$224,094.67

1 This amount needs to be adjusted to reflect additional payments made since October 2009
2 and include additional monthly interest at 1.5% per month as of the date the refunds are
3 made.

4 **Q. WHAT IS SWING FIRST ASKING THE COMMISSION TO ORDER UTILITY**
5 **TO DO?**

6 A. Swing First is asking the Commission to order Utility to do three things.

- 7 1. Pay Swing First the amount of \$224,094.67, adjusted for interest and monthly
8 payments made after October 31, 2009.
- 9 2. Pay Swing First its actual attorneys' fees in Utility's rate case and this complaint
10 case.
- 11 3. Apologize in writing to Swing First for the wrongs done to Swing First that are
12 the subject of this case.

13 **Q. THE COMMISSION DOES NOT NORMALLY REQUIRE THE RESPONDENT**
14 **IN A COMPLAINT CASE TO PAY ATTORNEYS' FEES; WHY ARE YOU**
15 **ASKING FOR THEM IN THIS CASE?**

16 A. This case is unique. It is not just an ordinary dispute between a utility and one of its
17 customers, where there is no apparent malice on the part of the utility. In contrast, Utility
18 has been engaged in a campaign—through abusing its monopoly power, withholding
19 available effluent, charging far more than lawful rates, and by other means—to try to
20 drive Swing First out of business and to cause me and my family as much grief as
21 possible. Utility has clearly acted maliciously.

22 Second, I could not possibly represent myself in this case. From the beginning I have
23 asked for nothing more than for Utility to bill according to the law, to pay what they owe
24 me, and to refund the gross overcharges that I naively paid them previously. This hardly
25 seems like an unreasonable request. This dispute should have been resolvable without

1 getting attorneys involved, but Utility refused to do what the law required. Utility is
2 represented by the largest law firm in the Southwest, with a large cadre of experienced
3 utility attorneys and an army of associates. Because Utility would not correct its errors,
4 and was escalating its campaign to drive Swing First out of business and to cause as
5 much grief as possible to me and my family, I had no choice but to hire an experienced
6 utility lawyer to file this complaint and represent me at the Commission.

7 Third, Utility has done everything it could to run up our legal bills and to make it
8 extraordinarily difficult to get meaningful responses to discovery. On February 20, 2009,
9 my attorney actually had to file a Notice of Inappropriate Discovery and Litigation
10 Tactics in this docket, which provided some details of Utility's practices as of that date.
11 Utility's conduct has not improved since that date.

12 Overall, Swing First would not be provided complete relief unless Utility is ordered to
13 pay our legal bills.

14 **Q. WHY ARE YOU ASKING TO BE COMPENSATED FOR YOUR LEGAL FEES**
15 **IN UTILITY'S RATE CASE?**

16 A. Much of the information that we have obtained that supports our complaint was obtained
17 in the rate case. By necessity, the two cases overlapped extensively, as Judge Wolfe
18 recognized in the rate case docket:

19 ...I can see the procedural predicament that Swing First is in. If they don't
20 bring up these issues, then in the other docket it could be alleged or it
21 could be charged that they didn't bring them up here. And vice versa, it
22 could have happened the other way if the complaint docket had gone
23 forward before this docket. (Docket No. WS-02987A-08-0049, Tr. at
24 254:7-13.)

25 If this case had gone forward before the rate case, then we would have incurred most of
26 our legal fees in this case. The only good news is that the hearing in this case should be
27 far shorter because the rate case went first.

1 There is another reason that our legal fees in the rate case should be paid by Utility.
2 Swing First's participation in that case was in the public interest because it provided the
3 Commission relevant information about Utility that it would otherwise not have
4 considered. In its rate-case brief, Staff stated (page 24): "Staff does note that Swing
5 First's intervention in this matter has helped bring to Staff's attention certain irregular
6 billing practices and other customer service issues." Similarly, RUCO stated in its brief
7 (page 20) that Swing First's evidence concerning Utility's environmental violations
8 "presents a public health and safety concern." On the basis of Swing First's evidence
9 RUCO concluded (page 29) that Utility "has violated the state's environmental statutes
10 and on numerous occasions and has placed the public's health and safety in jeopardy."

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 **A. Yes.**

Docket No. WS-02987A-08-0049
Direct Testimony of David Ashton
Exhibit DA-1

JOHNSON UTILITIES, LLC

968 E. HUNT HWY.

QUEEN CREEK, AZ. 85242

TEL: (480) 987-9870 FAX: (480) 987-9819

Invoice No. JU00448

INVOICE

Customer

Name SWING FIRST GOLF COURSE
Address 433 W. GOLF CLUB DR.
City QUEEN CREEK ST AZ ZIP 85243
ATTN:

Date 8/17/2006
Order No.
Rep
FOB

Qty	Description	TOTAL GALS.	FLAT FEE
LOCATION	Service Month: May 2006		
	ACCT. # 120362-01		
	Effluent Readings for May 2006		
	Start Read: 17,727,000 gal.	10,646,000	
	End Read: 28,373,000 gal.		
	ACCT. # 119200-01		
	CAP Readings for May 2006	8,415,000	
	Start Read: 351,197,000 gal.		
	End Read: 359,612,000 gal.		
	REMIT PAYMENT TO:		
	JOHNSON UTILITIES, LLC		
	5230 E. Shea Blvd.		
	Scottsdale, AZ 85254		
		19,061,000	
	SubTotal	\$	12,245.00
	Shipping & Handling		
	Taxes		
	TOTAL	\$	12,245.00

DUE UPON RECEIPT

Office Use Only

San Tan Wastewater Plant – Production and Sales

	<u>Swing First</u>	<u>Santan HOA</u>	<u>Total Sales</u>	<u>Effluent Produced</u>	<u>Unsold Effluent</u>
	<u>2006</u>	<u>(Million Gallons)</u>	<u>(Million Gallons)</u>	<u>(Million Gallons)</u>	<u>(Million Gallons)</u>
Mar	11.0886		11.0866	11.0866	0.0000
Apr	5.841		5.8410	10.917	5.0760
May	10.646		10.6460	11.318	0.6720
Jun	11.352		11.3520	11.543	0.1910
Jul	9.744		9.7440	12.497	2.7530
Aug	11.647		11.6470	13.335	1.6880
Sep	3.889		3.8890	13.297	9.4080
Oct	6.052		6.0520	14.127	8.0750
Nov	0		0.0000	14.794	14.7940
Dec	15.407		15.4070	13.3295	-2.0775
Total 2006	<u>85.6666</u>		<u>85.6646</u>	<u>126.2441</u>	<u>40.5795</u>
<u>2007</u>					
Jan	2.181	10.9120	13.0930	16.337	3.2440
Feb	1.4040	3.8320	5.2360	14.532	9.2960
Mar	0.0000	0.0000	0.0000	16.027	16.0270
Apr	0.3220	6.4950	6.8170	15.39	8.5730
May	0.0000	4.1850	4.1850	15.159	10.9740
Jun	0.0000	1.7660	1.7660	13.71	11.9440
Jul	0.0000	0.2060	0.2060	13.361	13.1550
Aug	0.0000	3.3400	3.3400	15.624	12.2840
Sep	0.0000	5.1000	5.1000	15.27	10.1700
Oct	0.0000	5.8240	5.8240	15.903	10.0790
Nov	0.0000	7.2810	7.2810	16.41	9.1290
Dec	7.0370	8.3450	15.3820	17.081	1.6990
Total 2007	<u>10.944</u>	<u>57.2860</u>	<u>68.2301</u>	<u>184.804</u>	<u>116.5739</u>
<u>2008</u>					
Jan	2.535	6.1350	8.6700	16.814	8.1440
Feb	5.469	3.0730	8.5420	16.652	8.1100
Mar	7.392	3.6500	11.0420	17.341	6.2990
Apr	14.417	5.0880	19.5050	16.658	-2.8470
May	14.309	0.0000	14.3090	16.898	2.5890
Jun	13.613	0.0000	13.6130	16.371	2.7580
Jul	11.877	2.6680	14.5450	17.196	2.6510
Aug	15.955	0.4890	16.4440	17.302	0.8580
Sep	13.276	0.2450	13.5210	16.968	3.4470
Oct	10.834	0.0930	10.9270	17.404	6.4770
Nov	12.065	0.0000	12.0650	17.89	5.8250
Dec	5.447	0.0000	5.4470	18.958	13.5110
Total 2008	<u>127.189</u>	<u>21.4410</u>	<u>148.6300</u>	<u>206.452</u>	<u>57.8220</u>
<u>2009</u>					
Jan	2.950		2.950	19.320	16.370
Feb	4.600		4.600	18.050	13.450
Mar	5.850	1.230	7.080	19.180	12.100
Apr	12.131	2.469	14.600	15.391	0.791
May	17.005		17.005	16.967	-0.038
Jun	14.273		14.273	15.836	1.563
Jul	16.846		16.846	16.618	-0.228
Aug	15.159		15.159	15.482	0.323
Sep	0.000		0.000		0.000
Oct	0.000		0.000		0.000
Nov	0.000		0.000		0.000
Dec	0.000		0.000		0.000
Total 2009 (8 mo.)	<u>88.814</u>	<u>3.699</u>	<u>92.513</u>	<u>136.844</u>	<u>44.331</u>
Total 2006-09	<u>312.6136</u>	<u>82.4260</u>	<u>395.0377</u>	<u>654.3441</u>	<u>259.3064</u>

Data Sources: Production from March 2006 through December 2008 - Exhibits SF-15 and SF-16
Sales from March 2006 through December 2008 - Exhibit SF-17
Production and Sales from January through March 2009 - Exhibit SF-19
Production and Sales from April through August 2009 - DR 8.1

Sales and Payments from November 2006 (Account Onset) through December 2007

CAP Meter	Volumetric Charge at CAP Rate (\$0.8278/1000)	Minimum Bill (6-in. meter)	Superfund Assessment	Transaction Privilege Tax	Correct Bills	Payments	CAP Overpayment
Nov-06	5.266 \$	4,359.19 \$	34.23 \$	347.11 \$	5,640.53 \$		
Dec-06	2.901 \$	2,401.45 \$	18.86 \$	217.90 \$	3,538.20 \$		
Jan-07	0.744 \$	615.88 \$	4.84 \$	100.05 \$	1,620.77 \$	9,200.00 \$	
Feb-07	0.000 \$	- \$	- \$	59.40 \$	959.40 \$	4,200.00 \$	
Mar-07	0.000 \$	- \$	- \$	59.40 \$	959.40 \$	5,200.00 \$	
Apr-07	3.374 \$	2,793.00 \$	21.93 \$	243.74 \$	3,958.67 \$	8,200.00 \$	
May-07	9.557 \$	7,911.28 \$	62.12 \$	581.54 \$	9,454.95 \$	8,420.97 \$	
Jun-07	11.516 \$	9,532.94 \$	74.85 \$	688.57 \$	11,196.37 \$	5,250.00 \$	
Jul-07	13.521 \$	11,192.68 \$	87.89 \$	798.12 \$	12,978.69 \$	- \$	
Aug-07	8.794 \$	7,279.67 \$	57.16 \$	539.86 \$	8,776.69 \$	- \$	
Sep-07	11.043 \$	9,141.40 \$	71.78 \$	662.73 \$	10,775.91 \$	4,501.00 \$	
Oct-07	3.007 \$	2,489.19 \$	19.55 \$	223.69 \$	3,632.43 \$	- \$	
Nov-07	6.565 \$	5,434.51 \$	42.67 \$	418.08 \$	6,795.26 \$	52,850.00 \$	
Dec-07	0.000 \$	- \$	- \$	59.40 \$	959.40 \$	12,625.00 \$	
2006-07 Total					\$ 81,246.66	\$ 110,446.97	\$ 29,200.31
Interest at 1.5%/month from January 2008 through October 2009 (22 months)							
Total Due Swing First						\$11,316.98	\$40,517.29

Overbilling Analysis (at Effluent Rate)

Exhibit DA-4

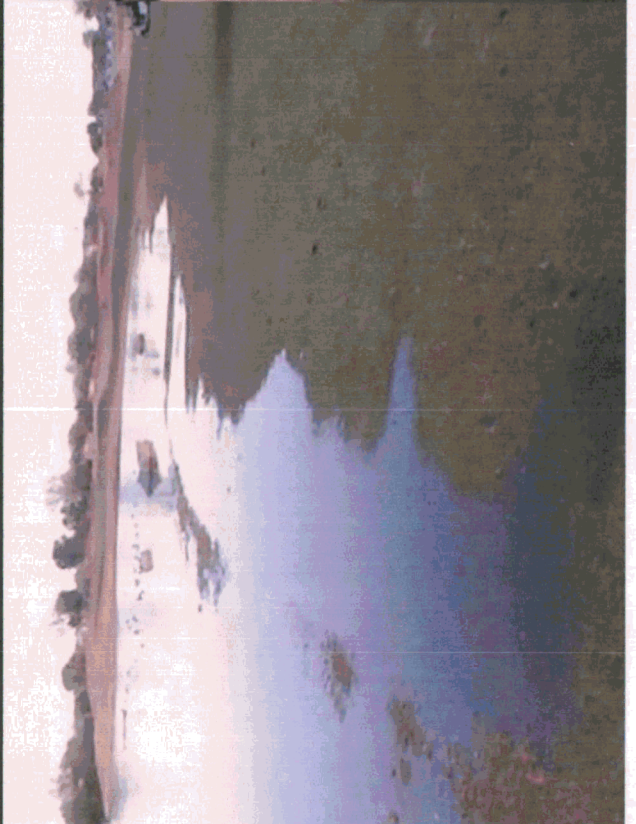
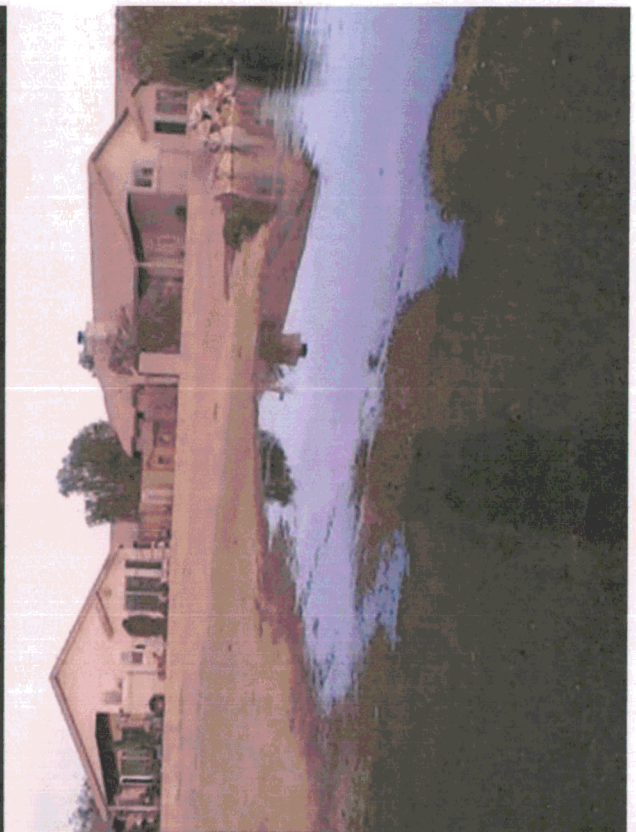
Correct Bills at Effluent Rate

	CAP Meter	Volumetric Charge at Effluent Rate (\$0.62/1000)	Minimum Bill (Already paid)	Superfund Assessment	Transaction Privilege Tax	Correct Bills	Payments	CAP Overpayment
Nov-06	5.266 \$	3,264.92	\$ -	\$ -	\$ 215.48	\$ 3,480.40		
Dec-06	2.901 \$	1,798.62	\$ -	\$ -	\$ 118.71	\$ 1,917.33		
Jan-07	0.744 \$	461.28	\$ -	\$ -	\$ 30.44	\$ 491.72	\$ 9,200.00	
Feb-07	0.000 \$	-	\$ -	\$ -	\$ -	\$ -	\$ 4,200.00	
Mar-07	0.000 \$	-	\$ -	\$ -	\$ -	\$ -	\$ 5,200.00	
Apr-07	3.374 \$	2,091.88	\$ -	\$ -	\$ 138.06	\$ 2,229.94	\$ 8,200.00	
May-07	9.557 \$	5,925.34	\$ -	\$ -	\$ 391.07	\$ 6,316.41	\$ 8,420.97	
Jun-07	11.516 \$	7,139.92	\$ -	\$ -	\$ 471.23	\$ 7,611.15	\$ 5,250.00	
Jul-07	13.521 \$	8,383.02	\$ -	\$ -	\$ 553.28	\$ 8,936.30	\$ -	
Aug-07	8.794 \$	5,452.28	\$ -	\$ -	\$ 359.85	\$ 5,812.13	\$ -	
Sep-07	11.043 \$	6,846.66	\$ -	\$ -	\$ 451.88	\$ 7,298.54	\$ 4,501.00	
Oct-07	3.007 \$	1,864.34	\$ -	\$ -	\$ 123.05	\$ 1,987.39	\$ -	
Nov-07	6.565 \$	4,070.30	\$ -	\$ -	\$ 268.64	\$ 4,338.94	\$ 52,850.00	
Dec-07	0.000 \$	-	\$ -	\$ -	\$ -	\$ -	\$ 12,625.00	
2006-07 Total						\$ 50,420.26	\$ 110,446.97	\$ 60,026.71
Interest at 1.5%/month from January 2008 through October 2009 (22 months)								
Total Due Swing First								\$23,264.17
								\$83,290.88

No minimum bill is included because Swing First was already being charged the Effluent Minimum Bill.

No Superfund Assessment because this charge was not authorized by the Commission.

Golf Course Flooding



George Johnson Letter to Swing First Members

Exhibit DA-6

JOHNSON UTILITIES, L.L.C

5230 East Shea Boulevard * Scottsdale, Arizona 85254
PH: (480) 998-3300; FAX: (480) 483-7908

February 9, 2009

Mr. Nick Enthoven
227 Monroe Dr.
Mountain View, CA. 94040

Re: Johnson Utilities, L.L.C.
David Ashton as Managing Member of Swing First Golf, L.L.C.

Dear Swing First Golf Member:

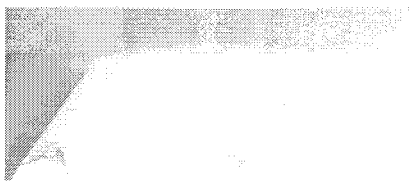
As you may or may not know, David Ashton, as the managing member of Swing First Golf, L.L.C., ("SFG") has filed a libelous complaint against Johnson Utilities, L.L.C. with the Arizona Corporation Commission, ("ACC"). Before Mr. Ashton filed his libelous complaint with the ACC, Johnson Utilities filed a lawsuit against SFG and David Ashton in the Superior Court of Arizona. The case number for that complaint is CV2008-000141. The complaint includes claims of Tortious Interference and Defamation among other things.

I am writing to you now for two reasons. First, Mr. Ashton, purportedly acting on behalf of SFG, continues to make libelous remarks and unsubstantiated filings with the ACC in effort to slander me personally and damage Johnson Utilities. I do not know whether you are aware of Mr. Ashton's actions on your behalf or whether you support those actions. However, because Mr. Ashton claims to be acting for SFG, and therefore on your behalf, we are considering adding all members of SFG personally as defendants in the pending Superior Court case. If you do not support Mr. Ashton's actions, please let me know as soon as possible. If I do not hear from you, we will assume that you support Mr. Ashton's actions, and will proceed accordingly.

The second reason for this letter is to make you aware of the nature of the character of Mr. Ashton who is your appointed representative of SFG. Attached you will find copies of complaints filed against Mr. Ashton in the Superior Court of Arizona. These complaints are unrelated to Johnson Utilities but, in my humble opinion, show "the nature of the beast" we are all dealing with in Mr. Ashton.

A cursory review of the financials that we understand have been provided to you would strongly suggest that an outside independent management and financial audit be performed on SFG since Mr. Ashton has been managing member. We would also suggest the independent financial audit should not be limited to SFG, but in light of the other superior court complaints, be extended to Mr. Ashton's personal tax returns.

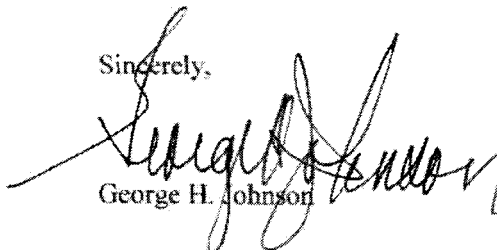
George Johnson Letter to Swing First Members



Swing First Golf, L.L.C.
February 9, 2009
Page 2 of 2

If we can provide additional information or answer any questions, please do not hesitate to call.

Sincerely,



George H. Johnson

Enclosure: Superior Court Complaint NO. CV2005-013279
Superior Court Judgment NO. CV2005-013279
Superior Court Complaint NO CR2005-110896-001